IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2314 of 2006
to
FIRST APPEAL No.2322 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 1 - Appellant(s)
Versus
NADIYA SADABHAI DHULABHAI - Respondent(s)

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Appearance :
MR SS SHAH, GOVT.PLEADER for Appellant (In FA 2314/06 & 2318/06)

MR LR PUJARI, AGP for Appellant (In FA 2219/06 & 2322/06)
MR AJ PATEL for Respondents-Claimants (In all First Appeals)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 30/10/2006

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. The abovenumbered Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated April 15, 2005, rendered by the learned Assistant Judge and Special Judge (LAR) Ahmedabad (Rural) in Land Acquisition Case No.2364/1996 with Land Acquisition Case Nos.2366/1996 to 2374/1996, by which, the claimants have been awarded additional compensation at the rate of Rs.23/- per sq.mt. over and above the amount of compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.2.10 ps. per sq.mt., by his award dated September 30, 1996, for their acquired lands.

2. A proposal was received by the State Government from the Executive Engineer, Construction Division No.16, Narmada Project Goraiya Branch Canal, Mehsana, to acquire lands of village Madrisana, Taluka: Detroj, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the lands of village Madrisana were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on June 20, 1995. The land owners were thereafter served with notices under Section 4 of the Act and they opposed the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On scrutiny of the said

report, the State Government was satisfied that the lands of village Madrisana which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on December 13, 1995. The interested persons were thereafter served with the notices under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated September 30, 1996, offered compensation to the claimants at the rate of Rs.2.10 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the

Special Land Acquisition Officer was totally inadequate. Therefore, they preferred applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (R), where they were registered as Land Acquisition Case No.2364/1996 with Land Acquisition Case Nos.2366/1996 to 2374/1996.

3. On behalf of the claimants, witness Rameshbhai Shankardas Patel was examined at Ex.17. Over and above stating that the lands acquired were highly fertile and that each claimant was earing the net profit of Rs.35,000/- to Rs.40,000/- per Vigha per year from the sale of agricultural produces, he produced previous award of the Reference Court relating to the lands of the same village

at Ex.16. It was claimed by the said witness that the lands which were acquired earlier and the lands which were subject matter of acquisition in the instant case were similar in all respects. Though this witness was cross -examined by the learned District Government Pleader on behalf of the appellants, nothing could be elicited so as to doubt his assertion that the lands of village Madrisana which were acquired in the instant case were similar in all respects to the lands which were acquired earlier from this very village.

4. On behalf of the appellants, witness Ghanshyamdas Omprakash Gupta, who was then discharging duties as Deputy Executive Engineer, was examined at Ex.18. In his cross-examination, he had to admit that he was not on duty when acquisition proceedings were initiated in the instant case. It was also admitted by him that the lands acquired were irrigated lands.

5. On appreciation of evidence adduced by the parties, the Reference Court in the instant case was of the opinion that the previous award of the Reference Court relating to the lands of this very village furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the previous award, the Reference court has awarded additional amount of compensation at the rate of Rs.23/- per sq.mt. over and above what is awarded to the claimants by the Special Land Acquisition Officer, vide judgment and award dated April 15, 2005, giving rise to the abovenumbered Appeals.

6. This Court has heard Mr.S.S.Shah, learned Government Pleader with Mr.L.R.Pujari, learned Assistant Government Pleader for the appellants as well as Mr.A.J.Patel, learned counsel for the claimants in each Appeal. This Court has also considered the paper-book supplied by the learned

counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though it was claimed by the witness for the claimants that the lands acquired in the instant case were highly fertile and that each claimant was earning income of Rs.35,000/- to Rs.40,000/- per Vigha per year from the sale of agricultural produces, no documentary evidence could be produced by the claimants to substantiate the said claim. The record does not indicate that the claimants had claimed enhanced compensation either on the basis of comparable sale deeds or on yield basis. What was relied upon by the claimants for claiming enhanced compensation was the previous award of the Reference Court relating to the lands of this very village which was produced at Ex.16. Exhibit 16 indicates that the lands of village Madrisana were acquired for the

public purpose of construction of Narmada Canal pursuant to publication of Notification issued under Section 4(1) of the Act in the official gazette on June 20, 1995. Therein, the Special Land Acquisition Officer, by his award dated September 30, 1996, offered compensation to the claimants at the rate of Rs.2.10 ps. per sq.mt. Feeling aggrieved, the claimants had sought references which were registered as Land Acquisition Case Nos.721/1998 to 724/1998. The Reference Court, on appreciation of evidence, awarded additional compensation to the claimants at the rate of Rs.23/- per sq.mt. over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.2.10 per sq.mt., by judgment and award dated August 31, 2004. Thus, Exhibit 16 indicates that by two different Notifications published under Section 4, two parcels of lands of the same village

were acquired for the same public purpose. It is well settled that previous award of the Reference Court, which has attained finality, can be relied upon for the purpose of determining the market value of the lands acquired from that very village subsequently. The record further shows that the previous award of the Reference Court dated August 31, 2004, rendered in Land Acquisition Case Nos.721/98 to 724/98 has been slightly modified vide judgment dated October 30, 2006, rendered in First Appeal Nos.2212/2006 to 2215/2006, by holding that the claimants in those cases would be entitled to compensation at the rate of Rs.25/- per sq.mt. and not at the rate of Rs.25.10 ps. per sq.mt. In view of the decision of the High Court, this Court is of the opinion that the claimants in this case also would be entitled to compensation at the rate of Rs.25/- per sq.mt.

8. On re-appreciation of evidence, this Court finds that correct findings of facts have been arrived at by the Reference Court to which settled principles of law have been applied and no ground is made out by the learned Government Pleader to interfere with the same in the instant Appeals. However, as observed earlier, on the basis of previous award of the Reference Court, as modified by the High Court, the claimants in the instant case would be entitled to compensation at the rate of Rs.25/- per sq.mt. and to that extent, the instant Appeals will have to be allowed.

9. For the foregoing reasons, all the Appeals partly succeed. The judgment and award dated April 15, 2005, rendered by the learned Assistant Judge and Special Judge (LAR) Ahmedabad (Rural) at Navarangpura, Ahmedabad, in Land Acquisition Case No.2364/1996 with Land Acquisition Case Nos.2366/1996 to

2374/1996, awarding in all compensation to the claimants at the rate of Rs.25.10 ps. per sq.mt. for their acquired lands is hereby modified and it is held that the claimants would be entitled to compensation at the rate of Rs.25/- per sq.mt. The Appeals are allowed only to the extent indicated hereinabove. The other directions contained in the impugned judgment and award are not interfered with at all and are hereby confirmed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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